IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 471 OF 2000

Narayan Rambhau Tarade. ....Appellants.
(Orig.Accd.)

Versus

The State of Maharashtra ....Respondent.

Mrs.Prajakta Shinde (appointed), Adv. for the appellant.

Mrs.P.H.Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

24.9.2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by Additional Sessions Judge, Pune, on 19.1.2000 in Sessions Case No.160 of 1999, the appellants-accused has preferred this appeal on the grounds mentioned in the memo of appeal.

2. With the assistance of learned counsel and the learned Assistant Public Prosecutor we have scrutinized and reappreciated the evidence on the record on the basis of which the learned trial Judge came to the conclusion of conviction.

3. The prosecution story as it emerges from reappreciation of evidence stated briefly is that the victim Rohidas with his wife were residing near Tambe Poultry Farm where husband Rohidas was working as watchman. One Ranjana and Vaishali Moze were also working on the same farm. Surekha wife of the accused Narayan told wife of the victim that victim had illicit relations with Vaishali. This was communicated by wife of the victim to Vaishali and there was altercation between Vaishali and the wife of accused. The accused was residing near the house of the complainant and victim. This altercation was therefore reported to the police. On the next day i.e. 3.8.1998 around 8.00 a.m. in the morning the victim Rohidas and his wife started going towards police out post of Lohogaon. When they were so proceeding all of a sudden accused appeared and give a blow of the axe on the neck of the victim Rohidas which his wife saw. Rohidas died on the spot. On a complaint lodged investigation was taken up, accused was arrested and prosecuted under section 302 of Indian Penal Code. The learned trial Judge on appreciation of evidence convicted the accused as aforesaid. It is against this order of conviction that the present appeal is filed. We have heard Mrs.Shinde, learned advocate for the accused and Mrs.Kantharia, learned additional Public Prosecutor for the State. It is the contention of the learned advocate appearing on behalf of the appellant-accused that there was only one blow given, the wife who is the only eye witness admits that the husband was trailing her and therefore according to learned advocate she could not have seen the assailant. It is only because of previous incident that the appellant is framed in this charge. This contention was stoutly opposed by the learned public prosecutor and it was pointed out that the evidence though of solitary interested eye witness is unimpeachable and therefore the order of conviction needs no interference.

4. We have to consider these aspects in the light of evidence as reappreciated by us with the assistance of the learned counsel for the accused and the learned public prosecutor.

5. P.W. 1 – Umesh Khandave is a panch who was present when spot panchnama was recorded. He has proved the spot panchnama. He has also proved that while recording of the panchnama the blood samples of blood lying on the spot were also collected. There is nothing in cross examination which would require to discredit this witness. P.W. - 2 Balasaheb Rakhapasare is another panch who proves arrest of the accused and seizure of clothes on the person of the accused. He points out that the clothes of the accused were blood stained. P.W. 3 – Rohidas s/o Jayram Khandave has deposed that around 8.15 a.m. on 3.8.1998 he was standing in front of his house near the temple of Tukaram Maharaj when he noticed one person coming from Moze Ali side. Witness then states that the said person was armed with an axe and it was extensively stained with blood. He therefore questioned the person on which he said “Khalas Kela, Khalas Kela” and left in hurry. He identifies that person as accused in the Court. This witness therefore has seen the accused going away with the blooded axe saying “Khalas Kela, Khalas Kela”.

6. P.W. 4 – Vimal Padwal is an eye witness to the whole episode. She is wife of Rohidas who was assaulted by accused and who succumbed to injuries on the spot. She has described in great details the entire episode leading to the murderous assault on

her husband by the accused. She speaks of the allegations leveled against her husband and Moze sisters by the accused, she tells the Court how there was altercation between Moze sisters and wife of accused Surekha. She then deposes about police being informed about the altercation between Moze sisters and Surekha wife of accused. She talks of police making inquiries from her and then tells that when they were going towards police for inquiry on the next day morning the accused came with an axe and gave a death blow to the victim who is the husband of the witness. She then tells the Court that the husband immediately fell down and only said "Aai" and died. The witness was cross examined but she has with stood the cross examination. There is nothing to suggest that she is unnecessarily stating any falsehood. She has also told the police about the assault on her husband and has lodged the First Information Report.

7. P.W. 5 – Tatyabhau Shivarkar is the panch to the seizure and recovery of the axe, sickle, knife and blanket. When the seizure was effected the accused was present. In fact from deposition of this witness it will be seen that the accused himself had put these things in police station which in a way was a surrender by the accused to the police. The witness states that the axe was heavily blood stained. P.W. 6 – Gautam More is the police head constable who effected the above seizure. He has deposed that on 3.8.1998 around 9.00 a.m. one person came to the police chowky uttering the words "khalas kela, khalas kela" and that person is Narayan present in the Court. He then says that he was armed with blood stained axe, there was woolen blanket on his person which was also blood stained. He disclosed to the witness that he killed Rohidas Padwal on account of previous day quarrel which was noted in the police chowky. This admission being made

to police official is obviously inadmissible and will have to be ignored. But the fact remains that blood stained axe and blood stained blanket were recovered from the accused in the police station.

8. P.W. 7 - is the doctor Milind Vable who conducted the post mortem on the body of Rohidas. He has proved that the death was homicidal and was instantaneous. He has deposed that the injury was serious as the victim died immediately. He has opined the death was by the injury on the neck. P.W. 8 is Dilip Nimbalkar. A reading of his testimony creates doubt regarding his testimony. Why he was there is not disclosed, how he happened to be there is not disclosed, he therefore can be rejected as a chance witness. P.W. 9 – Appa Ibhad is the investigating officer.

9. It will be seen from the above evidence that the learned trial Judge has convicted the accused on the basis of sole testimony of the interested witness who was widow of the victim and corroborating circumstantial evidence of clinching nature. Merely because the sole eye witness is the widow of the victim her evidence cannot be rejected outright. It must be analyzed with the circumspection and there must be adequate corroboration to material statements made by her. She has deposed in nut shell that around 8.00 a.m. On 3.8.1998 when they were going towards police chowky accused came armed with axe, gave death blow on the neck of the victim and the victim fell. This statement of the witness gets immediate corroboration form the testimony of P.W. 3-Rohidas Khandave who states that around 8.00 a.m. or immediately thereafter he saw one person going with blooded axe when confronted by this witness the accused said “khalas

kela, khalas kela" and the witness then identifies the accused in Court as the same person. This witness was standing in front of his own house. There may not therefore be any doubt as to his presence or his being a chance witness.

10. The witness has then stated that he went to police station from the spot where he noticed victim lying motionless and saw the accused Narayan there in the police station. This statement of Rohidas is corroborated by statement of P.W. 6 – Gautam More who says that around 9.00 a.m. The accused walked into police station with blooded axe and blood stained blanket. The evidence of P.W. 6 therefore corroborates not only with the statement of P.W. 3 but also with the statement of P.W. 4 wife of victim in regard to her material statement that the accused was armed with axe and he dealt a blow with that axe and that axe being present in the station along with accused. In fact the presence of the accused in police station and seizure of the axe and blood stained blanket itself is substantial corroboration to the testimony of the witness P.W. 4 that the assailant was the accused.

11. In our opinion, such being the clinching circumstantial evidence available to corroborate eye witness account given by sole eye witness wife of the victim no error is committed by the learned trial Judge in accepting that testimony and convicting the accused as aforesaid. In our opinion, therefore, there is no substance in the appeal and the same is therefore dismissed. The amount quantified as fees payable to each, the learned Prosecutor and the learned Advocate appointed Mrs.Prajakta Shinde is Rs.750/- for this appeal.